8th February 2021

Ann E. Misback
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW,
Washington, DC 20551

Regarding: FEDERAL RESERVE SYSTEM 12 CFR Part 228 Regulation BB; Docket No. R-1723 RIN 7100-AF94 Community Reinvestment Act

Dear Secretary, Misback,

The National Diversity Coalition (NDC) is a national non-profit organization including the leadership of our nation's major African American, Asian, and Latino organizations as well as major minority and women oriented national nonprofits, businesses, and CDFIs, advocating for greater opportunity, economic empowerment, and financial equality for low-income, minority, and other disadvantaged communities. Our works stems on our mission to strengthen America's diverse communities through positive advocacy for increased corporate philanthropy and reduce income and wealth inequality. NDC has established itself as well recognized non-profit at the Federal as well as the State level through our active advocacy in major banking law reforms and participation in federally administered programs for the underserved. We have been a voice for the voiceless America.

We hereby submit our comments on Federal Reserve's Advance Notice of Proposed Rulemaking (ANPR) for the aforementioned Regulation on the Community Reinvestment Act. Please find attached our comments to the ANPR.

Sincerely,

Faith Bautista
Chief Executive Officer,
National Diversity Coalition

Comments by the National Diversity Coalition

FEDERAL RESERVE SYSTEM
12 CFR Part 228
Regulation BB
Docket No. R-1723
RIN 7100-AF94
Community Reinvestment Act

Preamble

The National Diversity Coalition (NDC) supports the efforts of the U.S. Federal Reserve Board (Board) to modernize regulation of the U.S. Community Redevelopment Act (CRA).
Firstly, NDC supports and agrees with the policy of the Office of the Comptroller of the Currency (OCC) final rule Docket ID OCC-2018-0008 effective beginning on October 1, 2020 which seeks to transform the ratings system. OCC states, “By moving from a system that is primarily subjective to one that is primarily objective and that increases clarity for all banks, CRA ratings will be more reliable, reproducible, and comparable overtime. Under the agency’s final rule, the same facts and circumstances will be evaluated in a similar manner regardless of the particular region or particular examiner. CRA activities will be treated in a consistent manner from bank to bank.”

We believe that this updated policy is consistent with good governance and that the Federal Reserve should align its future final rule to align, to the extent possible, with the OCC’s rule. We believe a coordinated framework serves the interest of the banking industry and the national interest to work towards mandates that are consistent across regulatory bodies. This decreases the complexity and onerousness of compliance with CRA and, we believe, will result in banks focusing on better outcomes for communities.

We further encourage the Board to increase the transparency of reporting such that the data for measuring CRA compliance appears in bank Call Reports and holding company Y-9 Reports on a quarterly basis in a form where industry analysts and Non-profits / Non-Governmental Organizations (NGO’s) such as NDC can independently engage in constructive efforts to improve the delivery of the CRA to underserved community constituencies.

We also encourage the gathering an annual publishing of lending, investment, and services data at the geographic granularity level in a form where it can be compared and overlayed with geographic deposit data collected annually by the Federal Deposit Insurance Corporation (FDIC) annual Summary of Deposits (SOD) exercise, economic data from the Department of Commerce, and population data from the U.S. Census Bureau. We believe this is invaluable information that will enable NGO's, state and local governments to better interact with the banking system to serve all communities.

We support CRA modernization strategies to promote regulatory rules that will encourage banks to commit capital and credit to a broader range of CRA related activities in their communities. We also support narrowing credit loopholes that have not proven additive to the CRA's Low-Moderate Income (LMI) focus objectives over time. We believe innovation and responsiveness are crucial and that rooting out "unintended disincentives" is clearly an area where modernization of regulatory oversight is helpful to the process.

Questions 1-3

The Board's areas of focus for CRA modernization is a good list. However, examining the overview, we notice that the Board to is considering leaving certain qualitative elements of the Regulation BB framework for some banks intact.

We encourage the adoption of quantitative and comparable analytics whenever possible so as to improve transparency and comparability across financial institutions as part of the Board's modernization.

We believe that leveraging future CRA examination methods to emphasize quantitative methods will lead to lower cost of compliance, more objective measurement of compliance, determination of truly "Outstanding" CRA performance, and the facilitation of better CRA policy implementation. We believe this serves both stakeholders and communities better.

We note for the Board that American society is a constantly changing space.

The historical purposes of CRA to address race-based redlining have expanded into a multi-axis equity process. In 21st century America, inequity in integrated service areas crosses racial, generational demographic, and cultural assimilation boundaries in complex patterns. The optimum CRA lending, investment and services practices within physical service areas varies more than ever on the localized inequities unique to each locale.

Compounding the problem, banking technology has changed disconnecting deposits and services from geography, which the Board rightly is considering as part of this ANPR. We have confidence in the Board's objectives to modernize CRA to address these complexities.

Questions 4 to 13, Regulation BB and Area of Service Delineation

With regards to small banks not being required to delineate CRA assessment area delineation outside their core areas, we believe the Board needs to carefully assess the reality that in the 21st century, small asset size no longer equates to limited area service presence. The internet has vastly expanded the reach of small institutions to make an impact reaching nationally. We understand this may complicate the assessment process.

However, we also see that this opens many opportunities for the CRA process to begin to account for the leverage of smaller institutions to have greater community impact. Innovations can allow institutions to cover banking deserts and underserved communities from afar in new ways. It can also be a vehicle for banking technology and financial technology to focus multi-area community services through a matrix of smaller institutions, including MDI's and CDFI's.

We suggest that the Board not limit itself to conventional thinking when modernizing CRA. We iterate again our suggestion that quantitative comparability of CRA performance spanning the smallest community bank, the virtual internet bank, and the national scale multi-unit bank holding company should be judged along a uniform criteria of community service that can demonstrate to any community where it has deposit, lending, credit or services presence, what is it doing to further CRA in those communities.

In this regard, we suggest that the Board note that, technologically, the means to gather and assess data in massive scale is now commonplace. The ability to analyze data is done at breathtaking speeds by industry, media, payments, and other users of "big data". If CRA is to truly be modern, it must take advantage of the transparency that can be realized from technologies that didn't exist when CRA was first adopted.

Questions 14-23, Retail Test Thresholds

We believe the Board is well equipped to assess thresholds to separate asset-based differences in CRA assessment criteria. We do believe that, regardless of measurement criteria, the output of information to the community of the rating of the institution with regards to the good it accomplishes in the community should be uniformly interpretable, regardless of the size of the institution.

Question 24 – 28, Retail Service Subtests

With regards to retail services subtests, we believe banks should interact with affected community groups to refine the definition of branch distribution to service area mapping in order to structure their assessment test plans. We know that community groups are best equipped to help banks identify urban holes and regional deserts. We suggest the Board make it standard practice for a bank to query community leaders to prepare their assessment matrices as a regimen of their CRA assessment process.

Questions 29 to 31, Deposit Products for LMI

We believe that unbanked and underbanked LMI persons are a universal problem-solving issue for the banking system. It is important that every depository institution have some form of offering aimed at LMI's as part of their CRA process, even if it means offering an allied institution's product to their market in instances where they are unable to do so organically. Given that, we suggest the board incorporate an LMI deposit services metric into the standard process regardless of institution and measure the efficacy of it.

Question 32
See previous comments to questions 14 to 31.

Question 33 -34, Retail Lending Subtest

We support the Board's notion of establishing major product line tests covering the mortgage, small busines and small farm areas of lending. We suggest to the Board that it carefully examine the efforts of the Project REACh process, which brings together exploration of these concerns in a regulatory, institution, and advocacy matrix, with regards to these areas an carefully study the learning curve being discovered. We believe the Board would benefit from studying this process prior to issuing a final rule so that this ANPR becomes the next logical step in the progression forward for CRA Modernization following the OCC's final rule.

We cannot over emphasize the importance, in our view, that each regulatory body is a building block to construct a pyramid of success for the US economy, versus separate pillar that never intersect.

Questions 35-37, Treatment of Consumer Loans

With regards to, *"What standard should be used to determine the evaluation of consumer loans: (1) a substantial majority standard based on the number of loans, dollar amount of loans, or a combination of the two; or (2) a major product line designation based on the dollar volume of consumer lending?"*, we believe that the quantity of lending and the dollar magnitude of lending are critical quantitative metrics for CRA evaluation.

We further believe that these quantitative metrics must be tested for efficacy against external benchmarks of extant need in the community served. The final measurement of CRA contribution to a community is not whether a token effort is made to create an appearance of service to a community; but whether the actual contributions made to a community are proportionally correct to the ability of the bank versus the need in the community.

We believe that the CRA process should ultimately measure, whether a depository institution is doing it's "fair share" in the community. We believe that regulators are equipped to create proper measurement systems to assess this cause-and-effect outcome test. We suggest the Board consider such a test regimen as it looks to formulating a final rule.

Question 38, Treatment of Purchased Loans

We believe that purchasing loans by financial institutions to bolster CRA credit is a legitimate form of asset acquisition that should receive CRA credit. Our logic in this instance is pragmatic. Our activities with Project REACh have revealed that opportunities exist to further the objectives of CRA by enabling larger institutions to support smaller institutions such as MDI's and CDFI's to reach deeper into underserved communities using their capital and technology to leverage the process. We believe these efforts should receive CRA credit and encourage the Board to formulate a final rule that recognizes this.

Question 39, Alternatives for Liquidity

We note to the Board that Project REACh is actively exploring a host of alternative financing and capital stack structures to facilitate better access to lending options for banks, MDI's, CDFI's that can free capital for productive economic use. These include active explorations of debt products, equity products, and government support products; all of which offer possibilities to assist Americans to improve their ability to acquire and retain their homes. We believe the Board should carefully examine these products prior to formulating a final rule in this area.

Questions 40-41, Broadening Considerations in Indian Country

We defer comment regarding this question to others better suited to opine.

Question 42, Community Development Test

We have no opinion in the Board combining community development loans and investments under one subtest.

Question 43 - 49, Community Development Financing Metric

We believe that for large retail banks, the Board should tie the CRA performance of institutions to the communities from which they draw deposits and make profits from lending, credit and services.

The use of a ratio of dollars of community development financing activities to the deposit base in a community is a good first test of community development financing activity. But dollar metric reinvestment alone is insufficient to fully gauge whether a large institution is sufficiently involved in a community, particularly so, for poorer communities and bank presence deserts.

The question of community reinvestment on a criticalness of needs basis, particularly in LMI, communities. Well to do communities tend to have surplus amounts to reinvest and the Board may wish to require large banks to identify what forms of CRA allocations they identify in their plans to shift surplus capacity into underserved locales. We believe that it may be advantageous to the CRA process to even offer large banks enhanced incentive to do so under CRA.

We believe the best alternative data sources that could measure a bank's capacity to finance community development come from the communities themselves. The enumeration of needs can certainly be catalogued. The guidelines from the optimization of deployment based on a sources and uses analysis process could be part of a comprehensive approach to CRA that a large institution can propose as part of its plans.

We also note here that transparency is paramount. Regardless of the spirit of surplus allocations to communities in need, large banks should clearly identify what areas they are taking the surplus from. This donor credit effect could actually also be a CRA credit in itself. Both local and national benchmarks are useful in this regard. We believe the Board should study this further.

Question 50 - 51, Community Development Services and Volunteer Activities

We strongly advocate that volunteer activities unrelated to the provision of financial services, or those without a primary purpose of community development, receive CRA consideration for all banks. The extant need to recognize these community contributions exist in both urban and rural America and a bank present in only one area or another should not be arbitrarily encouraged or discouraged from engaging in volunteer work.

We also believe that financial literacy and housing counseling activities without regard to income levels should be eligible for CRA credit. American awareness and skills at personal finance can be inadequate at any level of the economic strata. Efforts by banks to support improved financial literacy in the middle-income community, particularly in the younger generations, is just as important to the vitality of the US economy and its financial system as delivery counseling services to the LMI community.

Question 52 – 55, Qualifying Activities, Geographies and Affordable Housing

We believe the Board should include subsidized affordable housing, unsubsidized affordable housing, and housing with explicit pledges or other mechanisms to retain affordability in the definition of affordable housing for CRA purposes.

We suggest the definition of unsubsidized affordable housing be defined as subsidy mechanisms that do not rely on the use of government assisted programs such as "soft" loans, forgivable debt, et al. Rather, we believe the Board should encourage the design of home funding mechanisms that shift the cost that would have been born by the homeowner elsewhere, most likely to investors. We suggest the Board explore the work being done by Project REACh to identify equity-based mechanism that can augment debt structures as a means to improve the affordability of housing as part of its analysis prior to a final rule.

Question 56, Community Services

We suggest that the Board construct a process where local officials and community advocates determine are involved in the process of determining if a particular community services activity proposed by a bank is targeted to low- or moderate- income individuals. For fairness and transparency diligence purposes, there should be a standardized set of guidelines and checklists that opining local and NGO commenters to a bank's proposed activity should adhere within so that expectations for certify a community service activity are based on a common set of standards and expectations by all parties.

Question 57 – 59, Economic Development

We highly suggest that the Bord study the efforts of Project REACh as it identifies avenues of opportunity to further economic development for small business, small farms, and minority-owned businesses. We believe this process is constructive for identifying and constructing incentives that the board can implement.

Question 60 – 63, Revitalization and Stabilization

We believe the Board should establish an ongoing process that codifies and maintains the currency of the definitions of the types of activities and the standards of performance that will be considered to help attract and retain existing and new residents and businesses to communities.

We leave it to the board as to whether it wishes to convene its own independent process of work with other regulators to create a coordinated working group environment where the standards can be used to align multiple agencies into a coordinated policy process.

We suggest that the issues of the day are temporal and is it important that a codification process must be sensitive to this reality. We suggest issues about what standards should the Board consider defining "essential community needs" and "essential community infrastructure," and if these standards be the same across all targeted geographies are better left to a "living model" working group process. The same observation applies to the Board's question of whether disaster preparedness and climate resilience are qualifying activities. The correct answer is "it depends" and the optimization point changes for each case study.

Question 64 – 66, Minority Depository Institutions

We believe that the banking system is a system of systems. We support designating investments by stronger institutions in in MDIs, women-owned financial institutions, and low-income credit unions that are outside of assessment areas or eligible states or regions and providing CRA credit at the institution level for investments engaging in this form of support to be a positive form of leverage for the Community Reinvestment Act. We support designating these investments as a factor for an "outstanding" rating and we support the Board providing appropriate incentives to institutions to do so.

We further support the notion that MDIs and women-owned financial institutions receive CRA credit for investing in other MDIs, women-owned financial institutions, and low-income credit unions. The bottom line is leverage is leverage for the health of the system. We support both the giving and receiving institutions receiving receive CRA credit for investing in a co-op fashion.

We also believe the Board should consider incentives for additional investment in and partnership for larger institutions provide discounted technology and infrastructure assistance to MDIs. Examples include, payments processing, loan servicing, securities packaging, and access to ATM networks that can assist the MDI is being better able to serve its customers.

Questions 67, Community Development Financial Institutions

We believe CDFI's are a vital form of reaching communities and banks should receive CRA consideration for loans, investments, or services made in conjunction with a CDFI operating anywhere in the country, not just in its local area. This notion repeats a core them of our comment letter that eliminating friction in allocating surplus into need is, in our view, the most important agenda item for CRA modernization.

Questions 68 – 70, Geographic Areas for Community Development Activities

We believe a holistic approach that considers activities in "eligible states and territories" and "eligible regions" alongside the consideration of activities outside of assessment areas is entirely manageable. We do not see a conflict with maintaining an emphasis on activities within assessment areas provided that a community workgroup input process that generates continuous "data" to analyze the systemic efficiency accompanies the process.

We believe a going forward workgroup is the best vehicle for the Board to assess the case-by-case suitability of expands the geographic areas for community development activities to include designated areas of need.

We agree with the notion that activities within designated areas of need that are also in a bank's assessment area(s) or eligible states and territories being considered as particularly responsive and receiving a boost in CRA credit is a very good idea. It creates a natural tendency to favor local reinvestment.

The same notion of enhanced CRA credit to encourage access to credit for underserved or economically distressed minority communities applies, provided that local officials and advocates concur that the bank's activities deliver actual positive effects for the targeted community.

Questions 70 -71, Options to Provide Additional Certainty about Eligible Activities

We support an illustrative, but non-exhaustive, list of CRA eligible activities to provide greater clarity on activities that count for CRA purposes. We suggest that the development of such a list should be done by an inclusive workgroup including regulators, banks and advocacy groups, similar to the Project REACh model. We believe a master list should be published annually with the additional facility to publish ad hoc bulletins as the workgroup determines a compelling need to do so. At this time, we believe it is premature to decide how or if a pre-approval process for community development activities should focus on specific proposed transactions, or on more general categories of eligible activities.

Question 72 – 77, Strategic Plan Evaluation

To fulfilling the requirement to share CRA strategic plans with the public to ensure transparency, we support the notion that banks should make these plans public record documents. We are unclear as to whether the US convention of a regulatory agency being the central distribution publishing model or the international practice of the bank publishing it on their website model, or a private industry searchable library model, is the correct approach. What we do suggest is that the Board design a solution where the degree of difficulty for the public to easily locate, read and understand these CRA plans is made as simple an accessible as possible.

It would be helpful to clarify the type of consultation banks could engage in with the Board and other organizations that affect the design of a strategic plan.

We believe is it useful that banks actively engage with NGO's that can work with the bank to shape and affirm that a bank is demonstrating meaningful engagement with their community. We believe the Board should consider how it should incorporate this utility into its final rule concerning how banks should engage with communities while developing their plan and affirming and monitoring their completed plan.

In providing greater flexibility for banks to delineate additional assessment areas through CRA strategic plans, we believe that the "more eyes looking over the shoulders" effects of a more transparent process will improve the early detection of potential redlining.

We believe that guidelines regarding what constitutes a material change in the nature of a community's needs, particularly due to economic stresses due to externalities, such that it triggers with clarity when a bank should amend its strategic plan, is a very good idea,

With regards to the Board's question, *"Would a template with illustrative instructions be helpful in streamlining the strategic plan approval process?"*, a simpler roadmap is always a good thing.

Questions 78 – 99, Ratings

We defer comments on the technicality of rating computations to banks.